THE HONOURBALE SRI JUSTICE GODA RAGHURAM

WP NO.7204 OF 2007

Between:

B.Someswar Rao and others

....Petitioners

Vs.

The Commissioner, Kapra Municipality, Kapra and another

…Respondents

THE HONOURBALE SRI JUSTICE GODA RAGHURAM

WP NO.7204 OF 2007

ORAL ORDER

Heard the learned counsel for the petitioners and Sri R.Rama Chandra Reddy, the learned Standing Counsel for Greater Hyderabad Municipal Corporation, which is the successor of the 1st respondent-Municipality. The writ petition is disposed of on consent.

The writ petition is filed alleging that the respondents are laying a road through the petitioners' plots circumventing an existing road which is shown in the lay out dated.13-09-1991 released by the erstwhile Cherlapally Gram panchayat. The petitioners seek a direction to the respondents not to lay any road through the petitioners' plots as per the technical approval granted by the 2nd respondent on 06-12-2006.

The 1st respondent has filed a counter-affidavit. To the extent relevant and material, the counter reads as follows::

> 3." As per the records available with this respondents one Kesani Pentaiah @ Penta Reddy was the absolute owner of the land to an extent of Ac.8.03 guntas in Sy.No.149 and 150(old) corresponding to new survey Nos.188 and 189 of Cherlapally village and Mandal, which was part of erstwhile Kapra Municipality now part of GHMC(hereinafter referred as "GHMC" for brevity). The said pentaiah purchased the said property through a Registered Sale Deed dated.11-01-1955. Subsequently the said Pentaiah obtained layout permission from the Cherlapalli Grama panchayat during the year 1966-67 by naming the Colony as "Sri Mahalaxmi Nagar" and subsequently sold the plots to various persons in the year 1966-67 and ever since the said purchasers are in possession of the properties and some of them also have constructed houses by

obtaining permission from the erstwhile Kapra Municipality.

4. Be that as it may, in or about the year 1972 some of the plots in the said "Sri Mahalaxmi Nagar" were acquired by the Government for laying Railway Track to the HCL Company. At that time a dispute was raised by the legal heirs of the said Pentaiah regarding payment of compensation before the Land Acquisition Officer stating that they are entitled for the compensation as legal heirs of the late Pentaiah. The purchasers from Pentaiah also claimed for compensation. It is learnt that the dispute was referred to Civil Court under Section.30 and 31 of the Land Acquisition Act and the same was taken on file by the First Additional Judge, City Civil Court, Hyderabad, as O.P.No.269 of 1977. After due trial the matter was decided by the Civil Court in favour of the purchasers from Pentaiah, holding that the Legal Representatives of Pentaiah are not entitled to any compensation. Thereafter the matter was carried in appeal to this Hon'ble Court in C.C.C.A.No.110 of 1983 by the L.Rs. of late Pentaiah. The said Appeal was also dismissed and then the purchasers from Pentaiah became absolute owners of the property.

5. It is submitted that having failed in their attempts to claim compensation, the L.Rs of late Pentaiah viz.(1) K.Pratap Reddy, (2) Sudhakar Reddy, (3) Ramreddy Narasimha Reddy and (4) Sanjeeva Reddy have sold away the plots comprised in Sy.Nos.188 and 189 to the petitioners herein claiming to be real owners of the property being the sons of late Pentaiah. The said sale deeds were executed during the year 1981 to 1985. They also relied on a layout permission bearing No.4/LR/P/81, dated.30-09-1981, alleged to have been issued by the Cherlapalli Grama Panchayat.

6. It is further submitted, disputes arose between the purchasers from Pentaiah and purchasers from the L.Rs of Pentaiah over the possession of the property and the subsequent purchasers tried to interfere with their possession, the purchasers of Pentaiah, represented by Secretary, Sri Mahalaxmi Nagar, Cherlapally, approached the erstwhile Municipality to settle the dispute since the L.Rs of late Pentaiah were also relying on a layout permission. Pursuant to that on 05-10-1994, the Kapra Municipality submitted proposals to HUDA for regularization of layout pertaining to Sri Mahalaxmi Nagar in Sy.No.188 and 189 of Cherlapally.

7. It is relevant to submit that when the proposals were pending before the HUDA/2nd respondent herein, K.Pratap reddy S/o late Pentaiah and N.Dananjaya Goud, filed a petition before HUDA objecting for approval of layout and the said petition was forwarded to erstwhile Municipality by HUDA on 27-05-1995. Subsequently the 2nd

respondent in letter dated.23-06-1995, requested the Municipality to obtain the Resolution of Municipal Council.

8. It is pertinent to mention here, subsequent to the letter dated.27-05-1995 of the 2nd respondent, the Municipality through letter dated.14-06-1995, requested the Mahalaxmi Plot Owners Association, Cherlapalli and K.Pratap Reddy and N.Dananjaya Goud to attend the office of the Municipality along with the records in support of their case. It is submitted after verification of the documents the same was referred to the Municipal Council for decision. There after the Municipal Council in its Resolution No.516, dated.30-01-1996 resolved to submit the proposals to HUDA for regularization of layout in favour of Mahalxmi Nagar Plot Owners Welfare Association, Cherlapally. Pursuant to the said resolution the Municipal Commissioner, Kapra, through Letter No.F1/3003/94-95, dated.30-01-1996 (filed as Annexure-I), requested the 2nd respondent to regularize the same. Consequently the 2nd respondent in Lr.No.5682/P7/RL/HUDA/94, dated.16-12-1996 regularized the layout in Sy.No.188 and 189, in favour of Mahalaxmi Nagar Plot Owners Welfare Association, Cherlapalli, subject to certain conditions attached there in (filed as Annexure-II). Thereafter the Municipality through a letter dated.12-03-2001 (filed as Annexure-III) released the layout permission in favour of Sri Mhalaxmi Nagar Plot Owners, imposing certain conditions. It is submitted the Association also complied with the said conditions.

9. It is respectfully submitted nobody including the petitioners herein nor their vendors questioned the said regularization and the same has became final. The averment of the petitioners in the affidavit that some civil litigation are pending between the parties, it is submitted that this respondent is not a party to those proceedings nor the regularization proceedings are been challenged by the petitioners herein.

10. It is also submitted pursuant to the regularization of the layout the members of Sri Mahalxmi Nagar Plot Owners' Welfare Association have applied for grant of permission for construction of houses according to the approved layout and this respondent has to discharge its official obligation in the said matter. When the respondent is about to issue permissions the petitioners approached this Hon'ble Court and obtained interim orders suppressing the material facts.

11. It is respectfully submitted the story invented by the petitioners that the 1st respondent is proposing to lay the roads as per the sanctioned layout issued by the 2nd respondent herein dated.16-

12-1996 is denied. It is respectfully submitted the said allegation is made only to get interim orders from this Hon'ble Court. However, it is respectfully submitted as a Civil Authority, this respondent is duty bound to provide basic amenities to the Association since they have paid the requisite fee to provide Civic amenities as per Rules.

12. It is further submitted that the whole attempt of the petitioners is to see that the authorities give a go-bye to the layout plan approved by HUDA on 16-12-1996, which is legally valid whereas the alleged layout granted in favour of the petitioners' Vendors is *nonest* in the eye of law and it was never acted upon by the 1st respondent for any purpose."

As is apparent there is a serious dispute as to the petitioners' entitlement to the plots in question including their asserted rights of ownership thereto. Such disputes are not amenable to adjudication under Article.226 of the Constitution. The validity of the respondents' action pursuant to the grant of lay out by the 2nd respondent dated.16-12-1996 would have to be considered only if the petitioners are able to establish their entitlement to the plots in question either *qua* the title to the said plots or otherwise. The petitioners are required to establish such claim only before a civil court of competent jurisdiction.

On the aforesaid analysis thee are no merits particularly in view of the fact that in the counter-affidavit the 1st respondent denies the petitioners' rights to the plots in question. The writ petition is therefore dismissed. The petitioners are however at liberty to pursue the appropriate alternative remedies. No order as to costs.

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GODA RAGHURAM,J

5th SEPTEMBER 2007
*TSNR